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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 and 769

RIN 0560-AI32

Highly Fractionated Indian Land (HFIL) Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is implementing the HFIL Loan Program to provide revolving loan funds to eligible intermediary lenders familiar with Indian Lands. The intermediary lenders will provide loan funds to qualified individuals, entities, and tribes to purchase highly fractionated Indian land consistent with the Agricultural Act of 2014 (2014 Farm Bill). FSA is also requesting public comments on the rule.

DATES: Effective date: **[Insert date of publication in the FEDERAL REGISTER]**.

Comment date: We will consider comments that we receive by **[Insert date 90 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: We invite you to submit comments on the rule. In your comment, include the Regulation Identifier Number (RIN), the volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Carrie L. Novak, Senior Loan Officer, Loan Making Division,

Deputy Administrator for Farm Loan Programs, FSA, US Department of Agriculture, 1400 Independence Avenue, SW, Stop 0522, Washington, DC 20250-0522.

Comments will be available online at <http://www.regulations.gov>. A copy of this rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT: Carrie Novak; telephone; (202) 720-1643. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION

Background

The HFIL Loan Program is authorized by the section 5402 of the 2014 Farm Bill (Pub L. 113-79), which amended 25 U.S.C. 488 to allow the Secretary to make and insure loans to intermediary lenders to establish revolving loan funds for the purchase of HFIL. FSA will loan funds to intermediary lenders, who will facilitate the purchase and consolidation of fractionated interest by relending the funds to qualified tribes, individuals, and entities. FSA is adding 7 CFR part 769 to specify the requirements for the HFIL Loan Program. The rule provides a way for tribes and tribal members to obtain loans to purchase fractionated interests via intermediary lenders. The intermediary lenders will work with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) on the processes and procedures needed for the ultimate recipients to resolve the undivided interests in the fractionated land. FSA will provide a long term loan to the

intermediary lender and will review their reports and agreement to provide oversight of the lender's loan process and procedure; FSA will not provide oversight for the ultimate recipients.

As a result of the General Allotment Act of 1887 (also commonly known as the Dawes Act), Indian reservation land was allotted to individual tribal members. When an allottee died, title ownership was divided among his or her heirs, but the land itself was not partitioned and, as such, each Indian heir received an undivided interest in the land. As each generation passes, the number of owners grows exponentially. This has resulted in the highly fractionated ownership of much of the nation's Indian land. As ownership of Indian land descends from one generation to another, the long standing problem of fractionation continues to worsen as many tracts are owned by hundreds or even thousands of individuals. The ability of the owners to use land decreases as fractionation increases, sometimes to the point where it is nearly impossible to locate the owners or for the known owners to coordinate the use of the property. The HFIL Loan Program will help encourage intermediary lenders to provide loans to individual tribal members in order to resolve the highly fractionated ownership of land.

To ensure the HFIL Loan Program would have the greatest chance of success, FSA held a Tribal Consultation session on December 10, 2014. Recommendations on issues discussed during the Tribal Consultation have been addressed in this rule.

Definitions

Some definitions in this rule originate from other already established laws and regulations and are used here for consistency. Indian Country uses the definition in 18

U.S.C. 1151. “Native American Tribe” and “Tribal Entity” definitions are consistent with 7 U.S.C. 770, “Indian Tribal Land Acquisition Program.” HFIL will be defined as undivided interests held by four or more individuals. The definition in 25 U.S.C. 2201 defines highly fractionated as 50 or more undivided owners. A less constraining definition is needed for this rule in order for the HFIL Loan Program to effectively meet the objectives of consolidating fractionated interests. Tribal Consultation indicated that not all fractionated parcels have 50 or more owners and using the strict definition could exclude the parcels from the HFIL Loan Program.

In addition, § 761.2 needs to be revised to specify that the products of tree farming and the products of other plant and animal production are agricultural commodities. Therefore, this rule also revises the definition of “Agricultural Commodity” in § 761.2 as a conforming change. The intention of the list of items that are considered agricultural commodities has not changed; it is strictly correcting the language in the definition.

Intermediary Lenders

Through Tribal Consultation, it became apparent to FSA that the most important characteristics of an intermediary lender are the knowledge and familiarity of working with Indian Country and experience working with BIA. The list of entities in § 769.103 should be flexible enough to include any qualifying entity interested in participating in the HFIL Loan Program.

FSA will develop guidelines for and provide loan funds to the intermediary lenders, who will facilitate the purchase and consolidation of fractionated interest by

relending the funds to qualified tribes, individuals, and entities. FSA will establish criteria in § 769.103(b) and (c) for the intermediary lender that will be tied to the organization's demonstrated skills, ability, and knowledge of working with Indian land. The intermediary lender will establish eligibility criteria for the ultimate recipient as restricted by this rule in § 769.104.

An ultimate recipient is an entity or individual that receives a loan from an intermediary's HFIL revolving fund. The eligibility requirements of the ultimate recipient in § 769.104 are restrictive because this program is limited by the provisions of the 2014 Farm Bill; therefore, only Tribes, individual Tribal members, and Tribal entities are eligible to apply. In addition, the 2014 Farm Bill authorizes the HFIL Loan Program under 25 U.S.C. 488 rather than the Consolidated Farm and Rural Development Act (CONACT, 7 U.S.C. 1911-2008r) where most FSA loan programs are authorized. Accordingly, the FSA loan is to the intermediary lender as authorized under 25 U.S.C. 488 and the CONACT requirements regarding credit elsewhere and maximum loan amounts which typically apply to applicants of the FSA Farm Loan Programs do not apply to the intermediary or the ultimate recipient.

Use of HFIL Loan Funds

The purposes of the HFIL Loan Program are very specific and funds can only be used for the purchase of HFIL and related expenses as specified in §§ 769.105 and 769.106.

The HFIL Loan Program is subject to environmental compliance provisions specified in 7 CFR part 1940, subpart G. Accordingly, each intermediary lender will

provide FSA with documentation of its process to address environmental issues on the land to be purchased.

The Tribal Consultation resulted in the strong recommendation that the ultimate recipient be limited in use of loan funds to purchasing land for an agricultural use for the term of the loan. The requirement to qualify for HFIL loans is contained in this rule in § 769.106.

Intermediary Relending Agreement

The rate of interest for the intermediary lender will be set annually, but will not be less than 1 percent and the maximum HFIL loan term is 30 years. The intermediary lender will relend at a rate of interest and term negotiated with the ultimate recipient in a manner detailed in the Intermediary Relending Agreement approved by FSA.

The Intermediary Relending Agreement will contain the policies and procedures that the intermediary lender will follow with respect to the loan and the working relationship with the ultimate recipients. This will provide maximum flexibility for the intermediary lender to work with its ultimate recipient on loan making and loan servicing and will be approved by FSA prior to the HFIL loan closing. The required elements of the agreement are specified in § 769.103(d). The agreement and requirements are similar to the requirements in § 762.106 that must be met by FSA guaranteed lenders seeking certification as a preferred lender.

Revolving Loan Fund

An intermediary lender will be required to have a revolving loan fund. All HFIL loan funds received by an intermediary lender must be deposited into an HFIL revolving fund account. The account must be fully covered by federal deposit insurance or fully collateralized with U.S. Government obligations and must remain separate from other funds of the intermediary lender. The fund will have two types of deposit accounts, one of which will be HFIL funds from FSA. The other will be comprised of repayments of loans from the ultimate recipients, interest earned on funds in the account and cash, or other short-term marketable assets that the intermediary lender chooses to deposit. Loans made to ultimate recipients will be from both deposit accounts within the revolving fund account, and therefore, loans can be made from initial loan funds from FSA and from repayments. Administrative fees and debt servicing costs will be paid from funds accumulated from repayments by ultimate recipients. Maintenance of the fund is described in § 769.121.

Primary security for the HFIL Loan Program will be in the form of a first lien in the intermediary lender's revolving loan fund. Additional security will be required if needed to fully secure the loan.

FSA determined that yearly monitoring reports would be both necessary for the success of the program and beneficial to the intermediary lender. FSA did not want to be over burdensome in the required type of reporting or audits and therefore adopted an approach similar to what has been successfully used in the Boll Weevil Eradication Loan Program in 7 CFR part 77.

Transfer and Assumption of HFIL Loans

This rule is adding § 769.124 to allow for transfer and assumptions of the HFIL loans in the event that an intermediary lender should want or need to discontinue participation in the HFIL Loan Program.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. This rule is exempt from notice and comment rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). The rule provides a way for tribes and tribal members to obtain loans to purchase fractionated interests via intermediary lenders as a way to help resolve the longstanding problems relating back to HFIL and will enable tribal members to participate in USDA programs that require land ownership. As noted in this rule, FSA has conducted Tribal consultation and will take public comments following the publication of this rule. Therefore, to help tribal members as soon as possible, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the Federal Register. This rule allows FSA to implement the HFIL Loan Program in time for the 2016 fiscal year. Therefore, this final rule is effective when published in the Federal Register.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 1940, subpart G). This rule is to implement the new HFIL Loan Program, a program created by the 2014 Farm Bill. The discretionary provisions needed to implement the HFIL Loan Program, specifically those relating to our loans to the intermediary lenders include the loan making and servicing rules, which will mirror present FLP regulations. One discretionary provision that will not mirror current FSA rules is that implementation will be through an intermediary lender that will relend the funds, an approach that will be a new lending tool for FSA. The process FSA will use to administer the intermediary lending model was vetted through and determined to be acceptable by a Tribal consultation, held on December 10, 2014, at the Intertribal Agricultural Council annual meeting. As the provisions needed to implement this rule are all administrative in nature, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For

reasons set forth in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule does not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order

13175 imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not, to USDA's knowledge, preempt Tribal law.

Rulemaking to address the issue of HFIL was initially considered as part of the implementation of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, known as the 2008 Farm Bill). An HFIL loan program was authorized by the 2008 Farm Bill; however, the language required that the program operate as a direct loan program in which FSA would make loans directly to the ultimate recipients. During 2010, USDA held two sets of face-to-face Tribal consultation sessions across the country. FSA Farm Loan Programs held seven Tribal consultation sessions specifically to discuss the HFIL Loan Program (section 5501 of the 2008 Farm Bill) in the following locations on the following dates:

1.....	Washington DC	August 3, 2010
2.....	Pendleton, OR.....	August 10, 2010
3.....	Billings, MT.....	August 24, 2010
4.....	Rapid City, SD.....	August 25, 2010
5.....	Oklahoma City, OK.....	August 30, 2010
6.....	Albuquerque, NM.....	August 31, 2010
7.....	Fairbanks, AK.....	September 7, 2010

FSA Farm Loan Programs also participated in an additional seven Tribal consultation sessions across the country to discuss the 2008 Farm Bill changes, including the HFIL Loan Program. The USDA 2008 Farm Bill Tribal consultations were held in the following locations on the following dates:

1.....	Rapid City, SD.....	October 28 to 29, 2010
2.....	Oklahoma City, OK.....	November 3 to 4, 2010
3.....	Minneapolis, MN.....	November 8 to 9, 2010
4.....	Seattle, WA.....	November 22 to 23, 2010

5.....	Nashville, TN.....	November 29 to 30, 2010
6.....	Albuquerque, NM.....	December 1 to 2, 2010
7.....	Anchorage, AK.....	December 13 to 14, 2010

Early on, during the 2008 Farm Bill Tribal consultations, FSA heard the various concerns that were raised and thought a workable solution could still be found to implement the HFIL Loan Program; however, as additional concerns continued to be raised and differences were identified in other regions of the country, it became clear that one of the problems was that the 2008 Farm Bill provision was tied to the BIA definition of highly fractionated and as such would also be tied to the BIA procedures for clearing titles, so it was determined that a regulation would not result in a successful program for Indian country. FSA listened and heard concerns about the land being too fractionated, the process being too complicated, the difficulties in really understanding the issues that caused the fractionation, problems with consolidation, and related cultural issues. In addition to the complexity of the BIA process for clearing titles for fractionated land, the results were different across the country. In one example, it took 6 months to clear a title, in another example, clearing a title took 10 years. There were suggestions that the HFIL Loan Program would work if FSA worked with existing Native American organizations that were already established to consolidate fractionated land and make it a relending program.

As a direct result of everything that FSA heard and learned throughout the 2008 Farm Bill Tribal consultations, FSA provided input for the new requirements in the 2014 Farm Bill to work out a way to make the regulations effective for Indian Country by incorporating the option for an intermediary lender to relend the funds and remove the tie to the BIA definition of highly fractionated.

For the development of this rule, a Tribal consultation was held on December 10, 2014, at the Intertribal Agricultural Council annual meeting. The participants in the Tribal consultation have strongly supported the HFIL Loan Program. During the Tribal consultation, FSA staff asked for and received feedback on the following proposed provisions of the HFIL Loan Program.

HFIL Proposed Provision: Should the HFIL Loan Program be administered as a relending program?

Tribal Consultation Response: Yes.

HFIL Proposed Provision: Should there be a minimum number of acres consolidated with the HFIL Loan Program?

Tribal Consultation Response: No.

HFIL Proposed Provision: Should there be a limited number of intermediary lenders?

Tribal Consultation Response: Yes, given the limited amount of funds, approved intermediary lenders should be limited to no more than two lenders per year.

HFIL Proposed Provision: Should there be any restrictions to the use of funds under the HFIL Loan Program?

Tribal Consultation Response: Yes, funds should be used only for the consolidation of agricultural land.

During the 90-day comment period for this rule, FSA will schedule additional Tribal consultation on the HFIL Loan Program. Although FSA is making this rule effective on publication, FSA will work on changes to the regulation as needed based on comments and additional input from Tribal consultation.

In addition, to developing the HFIL Loan Program, FSA will continue to engage with Tribal organizations to ensure HFIL Loan Program rules are consistent with Tribal laws and so that the HFIL Loan Program has a maximum opportunity for success. USDA will continue to coordinate with Tribal governmental organizations concerning this rule and will provide appropriate venues, such as webinars and teleconferences, to host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

FSA will not be collecting any information from the ultimate recipients in the HFIL Loan Program. There are some reporting requirements on the HFIL Loan Program

activities from intermediary lenders to FSA. The intermediary lenders must allow FSA to review the ultimate recipients' records; the intermediary lenders maintain the records are expected to be a part of customary and usual business practices for the process of loans. Therefore, the burden associated with recordkeeping is excluded. The intermediary lenders will be an entity that meets certain criteria to be established by FSA such as: Has been active in the previous 5 years, and has expertise in technical assistance, is an established financial organization which is regulated by an acceptable state or federal regulatory agency, meets certain capital requirements, and ability to work with the Bureau of Indian Affairs (BIA). FSA will lend funds to an eligible entity, which will then relend directly to a Tribe or an individual. There are limited entities that will qualify to be intermediary lenders for the HFIL Loan Program. The current annual allocation of \$10 million will not sufficiently fund multiple intermediaries. For the HFIL Loan Program to be effective adequate funds must be available for each intermediary lender to borrow to relend. As discussed above, at the Tribal Consultation held on December 10, 2014, members in attendance strongly suggested that HFIL Loan Program be restricted to no more than 2 intermediary lenders per year for funding due to limited funding. FSA expects to have less than 10 intermediary lenders eligible to participate in the HFIL Loan Program annually. Therefore, this would not require OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 769

Loan program-Agriculture, Indians, Land.

For the reasons discussed above, FSA amends 7 CFR chapter VII as follows:

PART 761 – FARM LOAN PROGRAM; GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A – General Provisions

2. Amend § 761.2 as follows:

a. In the introductory text, add “and 769” immediately after “767”; and

b. In paragraph (b), revise the definition of “Agricultural commodity”.

The revision reads as follows:

§ 761.2 Abbreviations and definitions.

* * * *

(b) * *

Agricultural commodity means livestock, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, nursery crops, nuts, aquacultural species, and the products resulting from: livestock, tree farming, and other plant or animal production as determined by the Agency.

* * * *

3. Add part 769 to read as follows:

PART 769—HIGHLY FRACTIONATED INDIAN LAND LOAN PROGRAM

Sec.

- 769.101 Purpose.
- 769.102 Abbreviations and definitions.
- 769.103 Eligibility requirements of the intermediary lender.
- 769.104 Requirements of the ultimate recipient.
- 769.105 Authorized loan purposes.
- 769.106 Limitations.
- 769.107 Rates and terms.
- 769.108 Security requirements for HFIL loans and ultimate recipients.
- 769.109 Intermediary lender's application.
- 769.110 Letter of conditions.
- 769.111 Loan approval and obligating funds.
- 769.120 Loan closing.
- 769.121 Maintenance and monitoring of HFIL revolving fund.
- 769.122 Loan servicing.
- 769.123 Transfer and assumption.
- 769.124 Appeals.
- 769.125 Exceptions.

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 488.

§ 769.101 Purpose.

(a) This part contains regulations for loans made by the Agency to eligible intermediary lenders and applies to intermediary lenders and ultimate recipient involved in making and servicing Highly Fractionated Indian Land (HFIL) loans.

(b) The purpose of the HFIL Loan Program is to establish policies and procedures for a revolving loan fund through intermediary lenders for the purchase of HFIL by a Native American tribe, tribal entity, or member of either.

§ 769.102 Abbreviations and definitions

(a) Abbreviations. The following abbreviations are used in this part:

BIA – The Department of the Interior’s Bureau of Indian Affairs (BIA).

HFIL - Highly Fractionated Indian Land.

(b) Definitions. The following definitions are used in this part:

Administrator means the head of the Farm Service Agency or designee.

Highly Fractionated Indian Land (HFIL) means for the purpose of this part only, Highly Fractionated Indian Land is undivided interests held by four or more individuals as a result of ownership or original allotments passing by state laws of intestate succession for multiple generations.

Indian Country land, communities, and allotments means the following:

(1) All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; or

(4) All land, communities, and allotments that meet the definition of 18 U.S.C. 1151.

Intermediary lender means the entity requesting or receiving HFIL loan funds for establishing a revolving fund and relending to ultimate recipients.

Intermediary relending agreement means the signed agreement between FSA and the intermediary that specifies the terms and conditions of the HFIL loan.

Native American tribe means the following:

- (1) An Indian tribe recognized by the U.S. Department of the Interior; or
- (2) A community in Alaska incorporated by the U.S. Department of the Interior pursuant to the Indian Reorganization Act.

Revolving funds means a fund that has two types of deposit accounts, one of which will be HFIL funds from FSA and the other will be comprised of repayments of loans from the ultimate recipients, interest earned on funds in the account and cash, or other short-term marketable assets that the intermediary lender chooses to deposit.

Revolving funds are not considered Federal funds.

Tribal entity means an eligible entity established pursuant to the Indian Reorganization Act.

Ultimate recipient means Native American tribe, tribal entity, or member of either that receives a loan from an intermediary lender's HFIL revolving fund.

Undivided interest means a common interest in the whole parcel of land that is owned by two or more people. Owners of undivided interest do not own a specific piece of a parcel of land; rather they own a percentage interest in the whole.

§ 769.103 Eligibility requirements of the intermediary lender.

(a) Eligible entity types. The types of entities that may become an intermediary lender are:

- (1) Private and Tribal operated nonprofit corporations;
- (2) Public agencies – Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this part;
- (3) Indian tribes or tribal corporations; or
- (4) Lenders who are subject to credit examination and supervision by an acceptable State or Federal regulatory agency.

(b) Intermediary lender requirements. The intermediary lender must:

- (1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan;
- (2) Have a record of successful lending in Indian Country and knowledge and experience working with the BIA. The Agency will assess the applicant staff's training and experience in lending in Indian Country based on recent experience in loan making and servicing with loans that are similar in nature to the HFIL program. If consultants

will be used, FSA will assess the staff's experience in choosing and supervising consultants; and

(3) Have an adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary lender.

(c) The Intermediary Relending Agreement. The intermediary lender and the Agency will enter into an Intermediary Relending Agreement, satisfactory to the Agency based on:

(1) Loan documentation requirements including planned application forms, security instruments, and loan closing documents;

(2) List of proposed fees and other charges it will assess the ultimate recipients;

(3) The plan for relending the loan funds. The plan must have sufficient detail to provide the Agency with a complete understanding of the complete mechanics of how the funds will get from the intermediary lender to the ultimate recipient. Included in the plan are the service area, eligibility criteria, loan purposes, rates, terms, collateral requirements, a process for addressing environmental issues on property to be purchased, limits, priorities, application process, analysis of new loan requests, and method of disbursement of the funds to the ultimate recipient;

(4) Loan review plans that specify how the intermediary lender will review the loan request from the ultimate recipient and make an eligibility determination;

(5) An explanation of the intermediary lender's established internal credit review process; and

(6) An explanation of how the intermediary lender will monitor the loans to the ultimate recipients.

§ 769.104 Requirements of the ultimate recipient.

(a) Ultimate recipients must be individual Tribal members, Tribes or eligible Tribal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) The intermediary lender will make this determination in accordance with the Intermediary Relending Agreement.

§ 769.105 Authorized loan purposes.

(a) Intermediary lender. Agency HFIL loan funds must be placed in the intermediary's HFIL revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) Ultimate recipient. Loans from the intermediary lender to the ultimate recipient using the HFIL revolving fund:

(1) Must be used to acquire and consolidate at least 50 percent of the highly fractionated Indian land parcel and interests in the land. The interests include rights-of-way, water rights, easements, and other appurtenances that would normally pass with the land or are necessary for the proposed operation of the land located within the tribe's reservation;

(2) Must finance land that will be used for agricultural purposes during the term of the loan;

(3) May be used to pay costs incidental to land acquisition, including, but not limited to, title clearance, legal services, archeological or land surveys, and loan closing; and

(4) May be used to pay for the costs of any appraisal conducted in accordance with this part.

§ 769.106 Limitations.

(a) Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finders' fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as specified in 7 CFR part 12.

(b) The amount of loan funds used to acquire land may not exceed the current market value of the land as determined by a current appraisal that meets the requirements as specified in 7 CFR 761.7(b)(1).

(c) Agency HFIL loan funds may not be used for payment of the intermediary's administrative costs or expenses. The amount removed from the HFIL revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the HFIL revolving fund and must not exceed the amount approved by the Agency in the intermediary lender's annual loan monitoring report.

(d) No loan to an intermediary lender may exceed the maximum amount the intermediary can reasonably expect to lend to eligible ultimate recipients, based on anticipated demand for loans to consolidate fractioned interests and capacity of the intermediary to effectively carry out the terms of the loan.

§ 769.107 Rates and terms.

(a) Loans made by the Agency to the intermediary lender will bear interest at a fixed rate as determined by the Administrator, but not less than 1 percent per year over the term of the loan.

(1) Interest rates charged by intermediary lender to ultimate recipients on loans from the HFIL revolving fund will be negotiated between the intermediary lender and ultimate recipient, but the rate must be within limits established by the Intermediary Relending Agreement.

(2) The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the revolving fund's debt service costs and administrative costs.

(b) No loan to an intermediary lender will be extended for a period exceeding 30 years. Interest will be due annually but principal payments may be deferred by the Agency.

(1) Loans made by an intermediary lender to an ultimate recipient from the HFIL revolving fund will be scheduled for repayment over a term negotiated by the intermediary lender and ultimate recipient but will not exceed 30 years or the date of the end of the term of the HFIL loan, whichever is sooner.

(2) The term of an HFIL loan must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary lender's Intermediary Relending Agreement.

§ 769.108 Security requirements for HFIL loans and the ultimate recipients.

(a) HFIL loans. Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, taking into consideration the intermediary's financial condition, Intermediary Relending Agreement, and management ability. The intermediary is responsible to make loans to ultimate recipients in such a manner that will fully protect the interest of the intermediary and the Government. The Agency will

require adequate security, as determined by the Agency, to fully secure the loan, including but not limited to the following:

(1) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by law;

(2) Investments and deposits of the intermediary; and

(3) Capital assets or other property of the intermediary and its members.

(b) Liens. In addition to normal security documents, a first lien interest in the intermediary's revolving fund account will be accomplished by a control agreement satisfactory to the Agency. The control agreement does not require the Agency's signature for withdrawals. The depository bank must waive its offset and recoupment rights against the depository account to the Agency and subordinate any liens it may have against the HFIL depository bank account.

(c) Ultimate recipient. Security for a loan from an intermediary lender's HFIL revolving fund to an ultimate recipient will be adequate to fully secure the loan as specified in the relending agreement.

(1) The Agency will only require concurrence in the intermediary lender's security requirement for a specific loan when security for the loan from the intermediary lender to the ultimate recipient will also serve as security for an Agency loan.

(2) The ultimate recipient will take appropriate action to obtain and provide security for the loan.

§ 769.109 Intermediary lender's application.

(a) The application will consist of:

(1) An application form provided by the Agency;

(2) A draft Intermediary Relending Agreement and other evidence the Agency requires to show the feasibility of the intermediary lender's program to meet the objectives of the HFIL Loan Program; and

(3) Applications from intermediary lenders that already have an active HFIL loan may be streamlined by filing a new application and a statement that the new loan would be operated in accordance with the Intermediary Relending Agreement on file for the previous loan. This statement may be submitted at the time of application in lieu of a new Intermediary Relending Agreement.

(4) Documentation of the intermediary lender's ability to administer HFIL in accordance with this part;

(5) Submission of a completed Agency application form;

(6) Prior to approval of a loan or advance of funds, certification of whether or not the intermediary lender is delinquent on any Federal debt, including, but not limited to, Federal income tax obligations or a loan or loan guarantee or from another Federal agency. If delinquent, the intermediate lender must explain the reasons for the delinquency, and the Agency will take such written explanation into consideration in deciding whether to approve the loan or advance of funds;

(7) Prior to approval of a loan or advance of funds, certification as to whether the intermediary lender has been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of application.

(8) Certification of compliance with the restrictions and requirements in 31 U.S.C. 1352, and 2 CFR 200.450 and part 418.

(9) Certification to having been informed of the collection options the Federal government may use to collect delinquent debt.

(b) An intermediary lender that has received one or more HFIL loans may apply for and be considered for subsequent HFIL loans provided:

(1) The intermediary lender is relending all collections from loans made from its revolving fund in excess of what is needed for required debt service, approved administration costs, and a reserve for debt service;

(2) The outstanding loans of the intermediary lender's HFIL revolving fund are performing; and

(3) The intermediary lender is in compliance with all regulations and its loan agreements with the Agency.

§ 769.110 Letter of conditions.

(a) The Agency will provide the intermediary lender a letter listing all requirements for the loan. After reviewing the conditions and requirements in the letter of conditions, the intermediary lender must complete, sign, and return the form provided by the Agency indicating the intermediary lender's intent to meet the conditions. If certain conditions cannot be met, the intermediary lender may propose alternate conditions in writing to the Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance. The loan request will be withdrawn if the intermediary lender does not respond within 15 days.

(b) At loan closing, the intermediary lender must certify that:

(1) No major changes have been made in the Intermediary Relending Agreement except those approved in the interim by the Agency;

(2) All requirements of the letter of conditions have been met; and

(3) There has been no material change in the intermediary lender or its financial condition since the issuance of the letter of conditions. If there have been changes, the intermediary lender must explain the changes to the Agency. The changes may be waived, at the sole discretion of the Agency.

§ 769.111 Loan approval and obligating funds.

(a) Loan requests will be processed based on the date the Agency receives the application. Loan approval is subject to the availability of funds.

(b) The loan will be considered approved for the intermediary lender on the date the signed copy of the obligation of funds document is mailed to the intermediary lender.

§ 769.120 Loan closing.

(a) Loan agreement. A loan agreement or supplement to a previous loan agreement must be executed by the intermediary lender and the Agency at loan closing for each loan setting forth, at a minimum,

(1) The amount of the loan, the interest rate, the term and repayment schedule,

(2) The requirement to maintain a separate ledger and segregated account for the HFIL revolving fund; and

(3) It agrees to comply with Agency reporting requirements.

(b) Loan closing. Intermediary lenders receiving HFIL loans will be governed by this part, the loan agreement, the approved Intermediary Relending Agreement, security

instruments, and any other conditions that the Agency requires on loans made from the "HFIL revolving fund." The requirement applies to all loans made by an intermediary lender to an ultimate recipient from the intermediary lender's HFIL revolving fund for as long as any portion of the intermediary lender's HFIL loan from the Agency remains unpaid.

(c) Intermediary lender certification. The intermediary lender must include in their file a certification that:

- (1) The proposed ultimate recipient is eligible for the loan;
- (2) The proposed loan is for eligible purposes; and
- (3) The proposed loan complies with all applicable laws and regulations.

§ 769.121 Maintenance and monitoring of HFIL revolving fund.

(a) Maintenance of revolving fund. The intermediary lender must maintain the HFIL revolving fund until all of its HFIL obligations have been paid in full. All HFIL loan funds received by an intermediary lender must be deposited into an HFIL revolving fund account. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations. All cash of the HFIL revolving fund must be deposited in a separate bank account or accounts so as not to be commingled with other financial assets of the intermediary lender. All money deposited in such bank account or accounts must be security assets of the HFIL revolving fund. Loans to ultimate recipients must be from the HFIL revolving fund.

(1) The portion of the HFIL revolving fund that consists of Agency HFIL loan funds may only be used for making loans in accordance with § 769.105. The portion of

the HFIL revolving fund that consists of repayments from ultimate recipients may be used for debt service, reasonable administrative costs, or for making additional loans;

(2) An intermediary lender may use revolving funds and HFIL loan funds to make loans to ultimate recipients without obtaining prior Agency concurrence in accordance with the Intermediary Relending Agreement;

(3) Any funds in the HFIL revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients;

(4) All reserves and other funds in the HFIL revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses must be deposited in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and will be interest bearing. Any interest earned thereon remains a part of the HFIL revolving fund;

(5) If an intermediary lender receives more than one HFIL loan, it does not need to establish and maintain a separate HFIL revolving loan fund for each loan; it may combine them and maintain only one HFIL revolving fund, unless the Agency requires separate HFIL revolving funds because there are significant differences in the loan purposes, Intermediary Relending Agreement, loan agreements, or requirements for the loans; and

(6) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves should be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary

lender's portfolio of loans. Unless the intermediary lender provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 5 years and then maintained.

(b) Loan monitoring reviews. The intermediary lender must complete loan monitoring reviews, including annual and periodic reviews, and performance monitoring.

(1) At least annually, the intermediary lender must provide the Agency documents for the purpose of reviewing the financial status of the intermediary Lender, assessing the progress of utilizing loan funds, and identifying any potential problems or concerns. Non-regulated intermediary lenders must furnish audited financial statements at least annually.

(2) At any time the Agency determines it is necessary, the intermediary lender must allow the Agency or its representative to review the operations and financial condition of the intermediary lender. Upon the Agency requests, the Intermediary must submit financial or other information within 14 days unless the data requested is not available within that time frame.

(c) Progress reports. Each intermediary lender will be monitored by the Agency based on progress reports submitted by the intermediary lender, audit findings, disbursement transactions, visitations, and other contact with the intermediary lender as necessary.

§ 769.122 Loan servicing.

(a) Payments. Payments will be made to the Agency as specified in loan agreements and debt instruments. The funds from any extra payments will be applied entirely to loan principal.

(b) Restructuring. The Agency may restructure the intermediary lender's loan debt, if:

(1) The Government's interest will be protected;

(2) The restructuring will be performed within the Agency's budget authority;

and

(3) The loan objectives cannot be met unless the HFIL loan is restructured.

(c) Default. In the event of monetary or non-monetary default, the Agency will take all appropriate actions to protect its interest, including, but not limited to, declaring the debt fully due and payable and may proceed to enforce its rights under the loan agreement or any other loan instruments relating to the loan under applicable law and regulations, and commencement of legal action to protect the Agency's interest. The Agency will work with the intermediary lender to correct any default, subject to the requirements of paragraph (b) of this section. Violation of any agreement with the Agency or failure to comply with reporting or other program requirements will be considered non-monetary default.

§ 769.123 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by the Agency. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(b) Available transfer and assumption options to eligible intermediary lenders include the following:

(1) The total indebtedness may be transferred to another eligible intermediary lender on the same terms; or

(2) The total indebtedness may be transferred to another eligible intermediary lender on different terms not to exceed the term for which an initial loan can be made. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(c) The transferor must prepare the transfer document for the Agency review prior to the transfer and assumption.

(d) The transferee must provide the Agency with information required in the application as specified in §769.109.

(e) The Agency prepared assumption agreement will contain the Agency case number of the transferor and transferee.

(f) The transferee must complete an application as specified in § 769.109(a).

(g) When the transferee makes a cash down-payment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in order of maturity date.

(h) The Administrator or designee will approve or decline all transfers and assumptions.

§ 769.124 Appeals.

Any appealable adverse decision made by the Agency may be appealed upon written request of the intermediary as specified in 7 CFR part 11.

§ 769.125 Exceptions.

The Agency may grant an exception to any of the requirements of this part if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing law or any other applicable law.

Val Dolcini,
Administrator,
Farm Service Agency.

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